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## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 79**

**[CG Docket No. 06-181; FCC 11-159]**

Anglers for Christ Ministries, Inc., New Beginning Ministries; Petitioners; Interpretation of Economically Burdensome Standard

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission grants an Application for Review challenging the Anglers Order, and reverses the two exemptions granted in the Anglers Order and the 296 exemptions subsequently granted in reliance on the Anglers Order. The intended effect of this action is to ensure that the Commission evaluates petitions for exemption from the captioning rules in the way intended by the Communications Act (Act).

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Traci Randolph, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418-0569 or e-mail [Traci.Randolph@fcc.gov](mailto:Traci.Randolph@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Memorandum Opinion and Order (MO&O), document FCC 11-159, adopted October 20, 2011, and released October 20, 2011, in CG Docket No. 06-181. Simultaneously with the MO&O, the Commission also issued an Order (Order) in CG Docket No. 06-181, and a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 11-175. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send copies of FCC 11-159 via certified mail, return receipt requested to counsel for or the last known address for each of the petitioners named in this matter by November 3, 2011. Each of the petitions noted in document FCC 11-159 Appendix A that were the subject of the Application for Review shall be dismissed by January 18, 2012. Affected petitioners may file new petitions in accordance with the statute and Commission rules by January 18, 2012. Any such petitioner who does not file a new

petition in accordance with the statute and Commission rules by January 18, 2012 must begin providing closed captioning of its programming beginning on January 19, 2012. The full text of document FCC 11-159 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12<sup>th</sup> Street, SW, Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, DC 20554, telephone: (800) 378-3160, fax: (202) 488-5563, or Internet: [www.bcpweb.com](http://www.bcpweb.com). Document FCC 11-159 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro/caption>. Appendix A associated with FCC 11-159 listing the Bureau Letter Orders is available <http://www.fcc.gov/cgb/dro/caption>.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

## **PAPERWORK REDUCTION ACT OF 1995 ANALYSIS**

Document FCC 11-159 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, see 44 U.S.C. 3506(c)(4).

## **SYNOPSIS**

1. Section 713 of the Act allows the Commission to grant individual exemptions, which are to be considered on a case-by-case basis upon submission of a petition to the Commission. Section 713(d)(3) of the Act, as originally enacted, permitted the Commission to grant such individual closed captioning exemptions to a provider, owner, or producer of video programming that petitioned the Commission, upon a showing that the closed caption requirements would "result in an undue burden." Section 713(e) of the Act defines "undue burden" to mean "significant difficulty or expense," and directs the

Commission to consider the following factors in making an undue burden determination: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner. The petitioner also may present for the Commission's consideration "any other factors the petitioner deems relevant to the Commission's final determination," including alternatives that might constitute a reasonable substitute for closed captioning.

2. Commission rules require the Commission to place any petition seeking an individual exemption from the closed captioning requirements under section 713(d)(3) of the Act on public notice, after which parties are given an opportunity to provide comments and petitioners are given an opportunity to reply to those comments. During the pendency of the petition, the programming that is the subject of the petition is exempt from the closed captioning rules.

3. On September 11, 2006, the Consumer and Governmental Affairs Bureau (CGB) released an Order (Anglers Order), 21 FCC Rcd 10094, granting exemptions to two petitioners – Anglers for Christ Ministries, Inc., and New Beginning Ministries – in a manner that deviated from the Act and the Commission's rules. The CGB then granted 301 individual petitions for exemption relying on the new standard established in the Anglers Order, also in a manner that deviated from the Act and the Commission's rules.

4. On October 12, 2006, a group of consumer organizations filed an Application for Review and a Petition for Emergency Stay requesting the Commission to rescind the Anglers Order and the hundreds of exemptions that were based on the Anglers Order.

5. In FCC 11-159, the Commission grants the relief sought in the Application for Review, and reverses exemptions granted to Anglers and New Beginning in the Anglers Order. The Commission concludes that the reasoning used in the Anglers Order for evaluating requests for exemption from the closed captioning rules on the basis of undue burden under section 713(d)(3) is not supported by the Act, its legislative history, or the Commission's implementing regulations and Orders. Specifically, the Commission reverses these exemptions because it finds that: (1) it was not appropriate to grant

exemptions based on the non-commercial nature and lack of remunerative value of Angler's and New Beginning's programming; (2) the Anglers Order should not have placed substantial reliance on Anglers' and New Beginning's non-profit status; (3) the presumption created in the Anglers Order, that future exemptions would be granted to non-profit entities for whom the provision of closed captions would "curtail other activities important to [their] mission," is an unworkable standard and not an appropriate factor for undue burden determinations; (4) neither Anglers nor New Beginning should have received permanent exemptions; and (5) the Anglers Order failed to consider whether petitioners solicited captioning assistance from their video programming distributors, as required by Commission precedent. Accordingly, the Commission rejects the undue burden criteria used in Anglers, and affirms instead the undue burden analyses previously applied to decisions that predate the Anglers Order.

6. In addition, the Commission reverses the hundreds of exemptions that were based on the rationale in the Anglers Order. As a substantive matter, the Commission finds that each of these exemptions cannot stand because each relied on the Anglers Order's rationale. Additionally, the Commission reverses the exemptions because none of the orders analyzed the individual circumstances of the petitioners under the "undue burden" criteria, as required under the Act and the Commission's rules. Finally, the orders were procedurally flawed because they waived, without justification, the Commission's public notice requirements for undue burden exemption petitions.

7. Each of the petitioners affected by document FCC 11-159 shall be provided with a copy of document FCC 11-159 and notified, by letter sent by first class mail, that it may file a new petition for a closed captioning exemption, consistent with the requirements of the Commission's rules and document FCC 11-159.

## **CONGRESSIONAL REVIEW ACT**

The Commission will send a copy of document FCC 11-159 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

## **ORDERING CLAUSES**

Pursuant to the authority contained in sections 4, 5, 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 155, 303, and 613, and §§ 1.115 and 1.411 of the Commission's rules, 47 CFR 1.115, 1.411, FCC 11-159 IS ADOPTED.

Pursuant to § 1.115 of the Commission's rules, 47 CFR 1.115, the Consumer Organizations' Application for Review of the Anglers Order and the Bureau Letter Orders IS GRANTED to the extent indicated in the item.

The Petition for Emergency Stay, filed by the Consumer Organizations IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,  
Secretary.

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